IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 6182 of 1999
AND
CRIMINAL APPLICATIONS Nos.6256/99 and 6588/99

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HANSABEN PUSHKARRAI VYAS

Versus

STATE OF GUJARAT

Appearance:

MR BM MANGUKIYA for Petitioners
PUBLIC PROSECUTOR for Respondent No. 1
MR KJ SHETHNA for Respondent No. 2
NOTICE SERVED for Respondent No. 3
MR PANKAJ K SONI for Respondent No. 4

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 27/07/2000

ORAL JUDGEMENT

#. Heard the learned advocate Mr.K.J.Shethna for the petitioners of the above stated three petitions.

Rule. Learned APP Mr.S.T.Mehta waives service of rule on behalf of the respondent nos. 1 and 3 in Criminal Misc. Application Nos.6256/99 and 6588/99, while learned APP Mr.S.S. Patel waives service of rule on behalf of the respondent nos. 1 and 3 in Criminal Misc. Application No.6182/99. Learned advocate Mr.H.A.Shah waives service of rule on behalf of the respondent No.2 in each of the petition and learned advocate Mr.Pankaj K. Soni waives service on behalf of the respondent No.4 in each of the petition.

#. As common question of law and facts involved in the above referred to three petitions all the three petitions are taken up for final hearing, heard together and are being disposed of by this common order.

#. The petitioners have challenged the legality and propriety of FIR registered vide CR No. I 302/99 at Kalol Taluka Police Station, District Mahesana for the offences made punishable under sections 365, 366, 368, 376, 497, 498, 380 read with section 114 of IPC and have prayed for quashing the same on the grounds contended in respective petition.

#. On 8.9.1999 the respondent No.2 in each of the petition Ramanbhai Mangaldas lodged the FIR (copy of which is produced at Annexure-A in respective petition) with Kalol Taluka Police Station against (1) Kulin Dhansukhlal Gandhi (petitioner of Criminal Misc.Application No.6588/99), (2) Dhansukh Hiralal Gandhi (expired pending the proceedings), (3) Hashmukh Dhansukhlal Gandhi (petitioner No.2 in Criminal Misc.Application No.6256/99), (4) Rita Dhansukhlal (petitioner No.3 in Criminal Misc. Application No.6256/99), (5) P.D.Vyas (petitioner No.3 in Criminal Misc.Application No.6182/99) and (6) Anjnaben Ramanbhai - respondent No.4 in each of the petition for the offences made punishable under sections 497, 498 and 380 read with section 114 of IPC alleging the following facts.:

It is alleged in the FIR that respondent No.4 Anjna is the daughter of the informant Ramanbhai Mangaldas and she is aged about 24 years. She has studied upto M.A. and was serving as a teacher in Pallavi School in Asarwa area of city of Ahmedabad. That her marriage was solemnized with one Pravinkumar Kantilal

Patel prior to about five years to the date of the incident. It is also alleged that the petitioner - Kulin Dhansukhlal Gandhi was also serving as a Clerk in the said Pallavi School and as such the respondent No.4 Anjana and Kulin got acquainted and ultimately the petitioner - Kulin developed close intimacy with the respondent No.4 Anjana. It is alleged that the husband of the respondent No.4 as well as the father having come to know about intimacy between the respondent No.4 and the petitioner Kulin have asked the respondent No.4 Anjana to stop the service in the said school and as such she had left the service and joined another school Gandhi Vidhyalaya also situated in the said area of Asarwa, city of Ahmedabad. Allegations further state that the petitioner - Kulin continued intimate relation with the respondent No.4 Anjana despite she having left the school and has started the service elsewhere and on the eve of festival of Rakshabandhan when Anjana had come to the parental place at village Soja, Taluka Kalol, District Mahesana and had stayed there with the parents, on 26.8.1999 when the informant Ramanbhai Mangaldas alongwith his son Sanjay were present at his house, accused nos.1 to 5 as stated in the FIR visited the house in Maruti Car bearing registration No.GJ - 1 280 around 11.30 a.m. That they introduced themselves as relatives of the husband of the respondent No.4 - Anjana and Anjana who was present at the parental house also accepted the same and invited them in the house. That the informant and his family members entertained the said accused nos. 1 to 5 as stated in the FIR and provided refreshment. The informant has alleged in the FIR that thereafter he went to the place of his maternal uncle alongwith his younger daughter - Sunita and had returned to his house around 5.00 p.m. in the evening. At that time, he found that ornaments kept in the cup-board a golden chain worth Rs.8000/- and cash amount of Rs.2000/- were missing. The respondent No.4 was also not found at the house. That thereby the first informant Ramanbhai made inquiry at the marital home of Anjana, but received news that she had not gone there. On further inquiry, he found that the accused who had visited his house in the morning have enticed the respondent No.4 - Anjana with intent to enter into the marriage with her or to have illicite sexual intercourse and have taken her with them and have also caused theft of above stated ornament and cash amount. That thereby he desired to file the criminal case against them.

#. That the said FIR was registered vide CR No.I 302/99 and the respondent No.3 commenced the investigation and during the course of investigation on 10.9.1999 made

report to the court of JMFC., Kalol so as to implead the offences made punishable under sections 365, 366 and 368 of IPC in CR No.302/99 registered at Kalol Taluka Police Station. Further more on 14.9.1999 the respondent No.3 made another report to the said court with a request to implead the offence made punishable under section 376 of IPC in the said crime qua the accused - Kulin Gandhi (petitioner of Criminal Misc.Application No.6588/99). It is stated in the report that while recording the statement of the respondent No.4 the facts were revealed to him that the accused Kulin Dhansukhlal Gandhi and his accomplice have rented the premises in the area of Ghodasar and had secretly kept the respondent No.4-Anjana there and thereafter they have taken her to Nari Saurankshan Gruh, Odhav and putting her outside the place of Nari Saurankshan Gruh had gone away. It is also stated that as per the statement of the respondent No.4, the accused - Kulin Dhansukhlal Gandhi used to visit the said premises rented to keep the respondent No.4-Anjana and had caused sexual intercourse twice or thrice and as such the offence made punishable under section 376 was required to be impleaded in the said crime.

#. The petitioners have challenged and have prayed to quash the above stated FIR and subsequent investigation carried out by the respondent No.3.

#. It may also be noted that, during the hearing of the above stated petitions, parties have attended the court and learned advocates for respective parties on instruction have stated at bar that the parties have treated the said incident as unfortunate but trivial incident and have expressed no hard feelings towards each other on account of any statement made either in the FIR or in the statement given to the police authority and no party desires to take any legal proceedings against each other.

#. The learned advocate Mr.K.J.Shethna appearing for the petitioners has relied on proviso (2) of section 198 of the Criminal Procedure Code and has contended that, no person other than the husband of the woman shall be deemed to be aggrieved by any offence punishable under section 497 or section 498 of the said Code and no cognizance of the offence should be taken except upon the complaint made by the aggrieved person that is the husband. That in the instant case, allegations in respect to the theft of ornament and cash are added so as to make the case cognizable. That the allegations made in the FIR itself ex-facie suggest that commission of theft by the respondent No.4 in the said facts and

circumstances is not only improbable but fantastic. Under such circumstances, FIR deserves to be quashed.

#. It is further submitted that the respondent No.4 has addressed the letter to the Jayotisangh dated 6.9.1999. The contents of the said letter also falsify the allegations made in the FIR. Copy of the said letter is produced at Annexure-H in the proceedings of Criminal Misc.Application No.6182/99 and it disclose the facts that the respondent No.4 - Anjana has addressed the letter intimating to Jayotisangh that after her marriage in the year 1995, she had gone to stay at the matrimonial house. But, she was not happy as her husband and mother-in-law used to pick quarrel with her on small excuse and her husband used to beat her. Not only that, but the husband used to give her mental torture. That her mother-in-law and husband used to ask her to bring Freeze, T.V. and other valuable from her parents. That on the eve of Rakshabandhan festival she had gone to her parental place and when she returned to the matrimonial home, mother-in-law and husband had asked her whether she has brought the ornaments and other valuable from her parental place or not and picked quarrel. Having got tired of such cruelty, she herself had left her matrimonial home and had taken the premises on rent to stay in the area of Ghodasar because her father refused permission to come to her parental place considering his prestige in the society.

##. Pending the hearing of the present petitions, the petitioners amended the petitions and impleaded said Anjana as respondent No.4 in each of the petition. She has appeared through the advocate and has tendered on record the affidavit sworn in on 21.7.2000. She has ratified the facts stated in earlier affidavit dated 4.9.1999 and has stated that earlier her affidavit dated 21.12.1999 which is filed in English does not contain the correct facts. Not only that as reported by the respondent No.3 on the basis of so called statement of her, she has clarified that the accused Kulin Gandhi has not committed any offence of rape as alleged.

##. It would be pertinent to note that the said Anjana has filed H.M.P. No.370/99 against her husband under section 13 of the Hindu Marriage Act, 1955 to claim divorce on the grounds narrated in the petition. Certified copy of the said petition is produced on record and the facts stated in the petition support the submissions urged at bar on behalf of the petitioners.

##. On the basis of the above stated facts, the learned

advocate Mr.K.J.Shethna for the petitioners has vehemently urged that uncontroverted version stated in the FIR registered vide CR No.302/99 at Kalol Police Station if construed in the context of the facts produced on record, cannot be said to disclose the offences as alleged. Not only that, initial cognizance of the crime taken by the respondent No.3 is also in violation of the statutory provisions and thereby FIR deserves to be quashed. In support of the submissions, he has relied on the observations made by the Apex Court in the matter of Madhavrao Jiwaji Rao Scindia and another Vs. Sambhajirao Chandrojirao Angre and others reported vide AIR 1988 SC 709.

##. It is pertinent to note that so far as allegation regarding theft of ornaments and cash is concerned, no material is produced on behalf of the respondent No.3 on record to substantiate the allegations. As such no affidavit-in-reply on behalf of the respondent No.3 is filed. That in view of the statement made by the respondent No.4 - Anjana on 4.9.1999 and her subsequent affidavit dated 21.7.2000 coupled with the facts stated in the letter addressed to Jayotisangh dated 6.9.1999 falsify the allegation regarding the offence of theft and as such prima facie in the absence of the complaint given by the husband of Anjana - respondent No.4, FIR registered by the respondent No.3 cannot be said to be legal and submissions urged on behalf of the petitioners are fortified by the said facts.

##. In the matter of State of Haryana Vs. Bhajan Lal reported vide AIR 1992 SC 604. The Supreme Court vide paras 111 and 117 enumerated the criterion for exercising of powers under Article 226 and under section 482 of the Criminal Procedure Code to interfere with any proceedings relating to the cognizable offences for the purpose of preventing the abuse of process of any court or otherwise to secure the ends of justice. The said criterion are abstracted hereunder.:

"(1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima face constitute any offence or make out a case against the accused.

(2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers

under S.156(1) of the Code except under an order of a Magistrate within the purview of S.155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under S.155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific procedure in the Code or the concerned Act providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

##. In the matter of Madhavrao Jiwaji Rao Scindia and another Vs. Sambhajirao Chandrojirao Angre and others reported vide AIR 1988 SC 709, the Supreme Court has made the following relevant and material observations vide para 7.:

"The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as

made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak and therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage."

##. If the facts discussed hereinabove as apparent from the FIR and other material collected subsequently by the respondent No.3 during the process of investigation, on the basis of the said FIR are construed in the context of observations made by the Supreme Court in the above referred to decisions, it could hardly be said that FIR disclose any offence as alleged. That the material collected by the Investigation Officer even if it is taken in its uncontroverted version, the chances of conviction being very bleak, it would not be just and proper to permit further proceedings on the basis of the said FIR as the prestige of the petitioners who are persons with reputation would suffer irreparable loss. Under the circumstances, following the dicta of the Supreme Court and in view of the statement of the respondent No.4 in the affidavit, the FIR as well as the proceedings pursuant to the registration of the said FIR deserve to be quashed.

##. On the basis of the foregoing discussion, FIR registered vide CR No.I 302/99 at Kalol Taluka Police Station and further proceedings pursuant thereof, are hereby quashed. Rule to that extent is made absolute.

(A.K.Trivedi,J)
(pathan)